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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,834	04/16/1999	KOJI MORIGUCHI	P99.0653	4060

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EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1754

20

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

292834

Applicant(s)

Maingochi

Examiner

Idenditson

Group Art Unit

1754

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 1/1/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachments

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tamaki et al. (EP 762,522).

Tamaki teaches on pages 4 and 5 a graphitized material containing 0.1% boron and having a d spacing of .336 or less. Although the surface area and between-closure structures are not recited, the material of Tamaki is deemed to possess them since the d spacing, which represents basic microstructure, is the same as claimed. Tamaki teaches in the examples a process in which mesophase pitch is carbonized and milled, then contacted with a boron source and heated to graphitization temperatures to make an electrode for lithium batteries. As the process and utility is (essentially) the same, no differences in the product are seen. The examiner takes Official Notice that making powder is known to require pulverization. The process claims are sufficiently unclear to determine whether any differences in process steps actually exist. The closed loop structure is merely the closure of uncompensated bonds (which the atoms would be thermodynamically inclined to do), while the section density appears possessed by the high Li capacity.

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Takami et al. 6156457.

Takami teaches a boron-graphite electrode in columns 7 and 10, made by mixing a boron source with carbonized pitch. No difference is seen in the number of layer-planes, as the process of making is essentially the same as claimed. The closed loop structure is merely the closure of uncompensated bonds (which is what the atoms would be thermodynamically inclined to do), while the section density appears possessed by the high Li capacity.

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Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A) In claims 1, 5 and 6, 'causing scraping' is unclear. Is the surface scraped off? If so, what physical means is used? If the surface just falls off, this is not 'scraping'.
- B) In claim 5, 'causing scraping ... to occur' is unclear.
- C) In claim 1, 'shearing' is misspelled.


Applicant's arguments filed 1/7/2002 have been fully considered but they are not persuasive.

The claims are awkwardly phrased and unclear, and not limited to the discharge capacity or high crystallinity argued. Arguments to claims 5 and 6 are irrelevant because Takami does not reject them. Claim 1 is a product claim so 'formed by' language does not distinguish it.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (703) 308-2539.


Stuart Hendrickson
examiner Art Unit 1754